

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1272 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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PATEL KUBERBHAI JIVIDAS

Versus

HEIRS OF GANESHBHAI VENIDAS

Appearance:

MR RC JANI for Petitioners
MR PK JANI for respondents

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/06/97

ORAL JUDGEMENT

1. This Civil Revision Application has a checkered history and the facts of the case show as to how the woes of litigant could be prolonged or procrastinated by diverse means. This Civil Revision Application is directed against the judgment and order of the Civil Judge, Junior Division, Vijapur below applications Exhibit 285 and 290 dated 24th November 1989. It appears that an application under the Bombay Agricultural Debtors Relief Act being Case No. 3752 of 1950 was filed before

the competent authority. It is in such proceeding that Kuberbhai Jividas and others being the present applicants filed the application at Exhibit 61. Proceedings were filed in the Court of Civil Judge, Junior Division, Vijapur, and in such application, it was contended that the applicant has in his application already contended that the land in question was mortgaged with the tenants. However, prior to the execution of the deed of mortgage, the land in question was in possession of deceased father Jivram Becherbhai as tenant of the said land and that the land was thus one of which the ancestors of the applicants were the tenants and were in possession thereof. It was also contended that even prior to the deed of mortgage, they were in possession of the land in question and, therefore, the question of handing over possession of the land on redemption of mortgage would not arise. It was contended that even if mortgage was redeemed pursuant to the tenancy rights, they were in possession and their possession as tenant was required to be protected. It was also contended that in view of the provisions contained in Section 25-F, Section 70(b), Sections 85 and 85-A of the Bombay Tenancy and Agricultural Lands Act, appropriate issue was required to be framed about tenancy of the applicant and the issue was required to be referred to the competent authority under the Bombay Tenancy and Agricultural Lands Act, 1947. In fact, two applications were made - one being Application Exhibit 286 and another being Exhibit 290, the first being for framing the appropriate issue and second being for referring the same to the Mamaltdar.

2. It appears that the tenant had admitted the factum of mortgage dated 10.5.1917 and they had applied to the competent authority under the Bombay Agricultural Debtors Relief Act for redeeming the mortgage and for handing over the possession of the land in question. The application was therefore one for raising appropriate issue and for making reference thereof to the Bombay Agricultural Lands Tribunal. Such application came to be decided by the Civil Judge, Junior Division, Vijapur, by judgment and order dated 3rd January, 1988, who, inter alia, held that the proceedings were in fact under the Bombay Agricultural Debtors Relief Act, 1947. He also noticed that under Sec. 17 of the said Act when such proceedings are filed, the court has to frame preliminary issues and preliminary issues which clearly fall within the ambit of the language of Section 17 have already been framed at Exhibit 71 and after giving sufficient opportunity to the parties to lead evidence, findings were recorded in the affirmative on both the issues which were required to be framed. Such order which was passed

by Civil Judge, JD, Vijapur, came to be challenged before the District Court in BADR Appeal No. 1180 and the Joint District Judge dismissed such appeal by judgment and order dated 30th April, 1982. The two preliminary issues which were required to be framed were as to what is found due at the foot of the account and whether the parties were entitled to lead evidence, if they so desire. After determining the amount of debt, and after following the procedure prescribed by the said Act, it is for the court to decide as to whether it should pass an order for delivery of possession and as to whether the mortgage should be redeemed and the debtors should be held entitled to the possession of the land mortgaged. Accordingly, Civil Judge, JD, Vijapur, vide order dated 3rd January 1983 held that in view of the various provisions of the said Act, the court may or may not pass an order for delivery of possession and it is thereupon open to the applicant to present the application of this nature at the relevant time. The application was treated as premature. The application at Exhibit 286 to frame the appropriate issue and to refer the same to the competent court under the Bombay Tenancy and Agricultural Lands Act, which was given at Exhibit 286 also came to be rejected by the judgment and order dated 24th of November 1988 wherein the court has given reasons as to why the issue in question was not required to be framed and as to why the same was not required to be referred to the competent authority under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1947. The applicant herein also filed application at Exhibit 290 and, inter alia, prayed that after raising the necessary issue as prayed for, such issues should be referred to the competent authority under the Bombay Tenancy and Agricultural Lands Act. The very purpose of these two applications was to see that the debtor under the Bombay Agricultural Debtors Relief Act may not get the relief to which he was otherwise entitled to and to prolong the proceedings so that the possession which was with the present petitioner should continue and he may enjoy the usufruct thereof.

3. Both such applications came to be rejected for very strong and convincing reasons by the Civil Judge, JD, Vijapur, by judgment and order dated 24th November, 1988.

4. This court has heard Mr. R.C. Jani, learned advocate for the petitioners at length. He has vehemently submitted before the court that even in the proceedings under the Bombay Agricultural Debtors Relief Act, when a debtor wants the relief of delivery of

possession, on his debt being extinguished, it is open to the debtor to contend that the initial relationship between the parties was that of landlord and tenant and that the mortgagee in possession was really the tenant in question and such a question is only to be tried by the mamlatdar under the Bombay Tenancy and Agricultural Lands Act and that the same was therefore required to be referred to the competent authority under Sec. 70(b) of the said Act. On the other hand, Mr. P.K. Jani, learned counsel appearing for the respondents 5/1 to 5/5 has contended that the proceedings under the Bombay Agricultural Debtors Relief Act are required to be decided with necessary promptitude and without any lapse of time. The object of the Act is to relieve the debtor of his debts and to get back to him the possession of the land which he might have mortgaged against the debt of which he is to be relieved. If the said object is to be kept in mind, such an attempt to prolong the proceedings should be discouraged and the competent authority under the BADR Act should be permitted to pass the appropriate order.

5. Having heard and appreciated the rival submissions of the learned counsel appearing for the rival parties, this court has no hesitation in holding that the trial court was absolutely within its jurisdiction in passing the two orders and in rejecting the applications. No jurisdictional error worth its name was committed by the trial court calling for the interference of this Court under Section 115 of the C.P. Code. It shall have to be noted that the transaction of mortgage is of the year 1917 and the application under the BADR Act is of the year 1950. Such an application of the debtor to redeem his debt and to get back to him the possession of the land in question, the hearing of the said application cannot be unnecessarily delayed, and if, the twin issues which are required to be framed or already framed by the authority, the authority should be permitted to decide the same and to pass the appropriate order as to whether mortgage should be redeemed or possession should be handed over to the debtor or not. In view thereof, I do not find any error relating to the jurisdiction committed by the lower court and no interference of this court is called for under Section 115 of the C.P. Code.

6. In the result, this Civil Revision Application fails, the same is dismissed and Rule is discharged. Interim relief granted earlier is hereby vacated. There shall be no cost.

7. The authority is directed to decide the proceeding expeditiously preferably by 30th April, 1998 and writ to this effect shall be sent to the learned Civil Judge, Junior Division, Vijapur forthwith.

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